UNITED
NATIONS

A

General Assembly

Distr.
GENERAL

A/AC.244/1/Add.3
3 April 1995
ENGLISH
ORIGINAL: ARABIC

AD HOC COMMITTEE ON THE ESTABLISHMENT
OF AN INTERNATIONAL CRIMINAL COURT
3-13 April 1995

COMMENTS RECEIVED PURSUANT TO PARAGRAPH 4 OF GENERAL ASSEMBLY RESOLUTION 49/53 ON THE ESTABLISHMENT OF AN INTERNATIONAL CRIMINAL COURT

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LIBYAN ARAB JAMAHIRIYA

[Original: Arabic]

The Libyan Arab Jamahiriya, which supports the efforts of the international community to establish a new international court to try international crimes whose perpetrators cannot be tried by national courts, considers that the establishment of such a court will help the international community deal with crimes which threaten its values and interests, in particular, crimes against the peace and security of mankind, war crimes and crimes against humanity. The Libyan Arab Jamahiriya hopes that the establishment of such a court will in future enable the international community to avoid a crisis which would be detrimental to an entire people, such as the crisis caused by non-compliance with the provisions of the Montreal Convention for the Suppression of Unlawful Acts against the Safety of Civil Aviation of 1971 in connection with the Lockerbie affair.

If the objectives that are sought in establishing an international criminal court are to be achieved, the following specific conditions must be met:

The court must have a legal and objective foundation and avoid any political considerations; it must enjoy total independence and must ensure all suspects who appear before it respect for all their rights and guarantees. In this way, everything possible will have been done to ensure the fairness and impartiality of the court. In addition, it is essential to complement this step by establishing the code of crimes under international law.

The Libyan Arab Jamahiriya expresses its satisfaction with the efforts made by the International Law Commission to prepare a draft statute for an international criminal court, but believes that the draft statute requires further study if it is to meet the expectations of the international community. The Libyan Arab Jamahiriya is convinced that the Ad Hoc Committee established under paragraph 2 of General Assembly resolution 49/53 will achieve this objective after it has considered the main substantive and administrative questions raised by the draft statute prepared by the International Law Commission.

The Libyan Arab Jamahiriya believes that the observations set out below deserve to be taken into account:

1. The Libyan Arab Jamahiriya endorses article 20 of that draft statute submitted by the International Law Commission, which relates to the crimes within the jurisdiction of the court, in particular, the crime of aggression listed in subparagraph (b).

The absence of a treaty definition of the crime of aggression should not preclude its inclusion in the list of crimes for which the court would have jurisdiction, since the international community is subjected to that crime on a continuing basis. International custom and the international criminal court can fill in any lacuna resulting from the absence of an accepted definition of aggression, while the international community should pursue its efforts to codify the acts which are crimes under international law, including aggression.

2. The Libyan Arab Jamahiriya is strongly opposed to the three paragraphs of article 23, relating to action by the Security Council. It believes that establishing a linkage between the Security Council, which is a political organ by nature and by virtue of its mandate and structure, and the international criminal court, whose establishment is intended to provide a neutral and impartial legal forum, will create enormous problems that will undermine confidence in the court's neutrality and impartiality. Experience in countless cases shows that the resolutions of the Security Council and the positions which the Council has taken on a great many questions can be influenced by the positions and interests of its members. In addition, there is the role played by the veto power enjoyed by the Council's permanent members. As a result of all of these factors, the Council has in the past been unable to deal with numerous situations in which there was blatant aggression. The inclusion of article 23 in the statute will hardly encourage States to accept the statute of the international criminal court.

The Libyan Arab Jamahiriya therefore takes the view that article 23 should be deleted in its entirety, together with the related provisions contained in other articles, namely, article 26, paragraphs 1 and 5, and article 27, paragraph 3.

3. Part 4 of the draft statute, dealing with investigation and prosecution, should cover the question of protection of individuals suspected of crimes and the provision of maximum guarantees of the Court's fairness and impartiality. It is also important to ensure that the authorities conducting an investigation or the Court do not exert any pressure on public opinion and the media generally.

4. The Libyan Arab Jamahiriya considers that article 42, paragraph 2 (b), as it stands does not provide objective criteria and opens the door to challenges of the legal systems of other countries, whether justified or unjustified, without any controls. If such a provision is necessary, the text will have to be amended in such a way as to base the exception on a situation in which the criminal proceedings were a sham. The international criminal court alone will then be the judge of whether or not that is the case.

5. The Libyan Arab Jamahiriya would like the Arabic version to be more polished; the text of article 51, paragraphs 1 and 2, in particular, should be reviewed.

6. The International Law Commission pointed out in paragraph 3 of its commentary on article 55, dealing with the rule of speciality, or rule of identity between transfer and trial, that it was for the State which the court has requested to waive the requirements laid down in paragraphs 1 or 2 of that article to decide the matter. Article 55, paragraph 3, should make that point absolutely clear so as to avoid any problem or disagreements in the future.